***THE HON'BLE SRI JUSTICE N.V. RAMANA**

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+WRIT PETITION NO.15950 OF 2001

%Dated 04.04.2006

B. Devadanam, S/o Yadaiah, R/o H.No.3-49, Kondapuram,

Ghatkesar Mandal, Ranga Reddy District.

..... PETITIONER

VERSUS

$ 1 The Labour Court-III, Hyderabad, rep. By its Presiding Officer and

another.

.....RESPONDENTS

! Counsel for Petitioner: Sri G. Ravi Mohan

^ Counsel for Respondent No.1: GP for Labour

Counsel for Respondent No.2: Sri K. Harinath, Standing Counsel

for APSRTC.

< GIST:

> HEAD NOTE:

? Cases referred:

1. 2001 (5) ALT 65 (DB)
2. 1995 (3) ALD 992 (DB)
3. AIR 2003 SC 3044 = 2003 AIR SCW 3872
4. (1992) 2 SCC 683

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 15950 of 2001

O r d e r:

The award dated 06.04.1999, passed by Labour Court-III, Hyderabad, in I.D. No. 44 of 1996, is called in question in this writ petition.

The petitioner was appointed as Conductor in 1979 with respondent No.2-APSRTC. On 17.12.1993, while he was conducting the bus service on the route Haliya to Miryalaguda, a check was exercised, and for certain irregularities, he was issued a charge memo. Thereupon, a charge sheet was issued to the petitioner on 23.12.1993. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 07.06.1994 calling upon the petitioner to show cause as to why he shall not be removed from service was issued to the petitioner. Upon considering the explanation submitted by the petitioner thereto, vide order dated 29.06.1994, the petitioner was ordered to be removed. The appeals preferred by the petitioner against the order of removal, were rejected by the authorities vide their orders dated 20.03.1995 and 18.10.1995. Assailing the order of removal, the petitioner raised industrial dispute in I.D. No. 44 of 1996, which the Labour Court vide the award impugned in the writ petition, dismissed the I.D. confirming the order of removal.

The learned counsel for the petitioner submitted that one of the two checking officials who is inimical to the petitioner, was examined, while the other checking official was not examined, and as such, the enquiry stood vitiated. He submitted that the material collected by the checking official from the passengers at the time of check, was not proved in the departmental enquiry, and as such, it cannot be used against him. In support of his contention that evidence collected in the preliminary enquiry cannot be used against the delinquent employee unless it is proved in the departmental enquiry, placed reliance on the judgment of this Court in **K. David Wilson v. Secretary to Government**. He submitted that the petitioner has not misappropriated any amounts, much less the ticket amounts, and this is evident from the fact that no excess cash was found with the petitioner when the check was exercised. He submitted that the petitioner has issued tickets to the passengers before starting of the bus from Haliya, and this is evident from the fact that the Controller at Haliya had also made an endorsement. The petitioner instead of punching Stage Nos. 1 to 7 had punched Stage Nos. 7 to 1, and having regard to the fact that the petitioner had closed the S.R. at each stage, which was admitted to

even by the checking officials, the question of the petitioner re-issuing the used tickets, does not arise, and at the most it can be said to be a case of wrong punching. He submitted for the act of wrong punching, the punishment of removal from service imposed upon the petitioner, is disproportionate, and at any rate, not commensurate with the proved misconduct. And inasmuch as the Labour Court has not considered the question whether the punishment imposed is commensurate with the gravity of the misconduct, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can consider the said question and interfere with the punishment imposed by the disciplinary authority, as confirmed by the appellate authority and the Labour Court, if it is not commensurate, and in this context, he placed reliance on the judgment of this Court in **Divl. Manager, LIC, Visakhapatnam v. S.S. Rajan**, and prayed that the punishment be modified.

The respondents filed counter. Reiterating the counter averments, the learned Standing Counsel for the respondents contended that the petitioner has unclean service record, and this is evident from the fact that he suffered punishment of deferment of increments 13 times, he was censured, warned and his security deposit was also forfeited. He submitted that the petitioner re-issued the issued tickets and indulged in tampering of the S.R., and therefore, his plea that he did not misappropriate any amount, is incorrect. He submitted that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct of misappropriation, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, which was confirmed in appeal as also by the Labour Court, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai,** the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

According to the petitioner, one of the two checking officials, who is inimical to him was examined, and non-examination of the other, had vitiated the enquiry. I am unable to agree with this submission of the petitioner. A perusal of the order passed by the Labour Court would disclose that even though one of the checking official, who according to the petitioner, is inimical to him, was examined, the fact remains, the petitioner in spite of being given opportunity by the Enquiry Officer to

examine any witnesses on his behalf, he failed to do so. The petitioner having not chosen to examine any witness, the enquiry officer, based on the material on record, came to the conclusion that the charges leveled against the petitioner stood proved, which were even confirmed in appeal as also the Labour Court, and no exception can be taken thereto.

No doubt this Court in **K. David Wilson v. Secretary** had held that the disciplinary authority cannot make use of any material or evidence collected by it in the course of preliminary enquiry against the delinquent official unless those materials and evidence are produced and proved in accordance with law in the regular departmental enquiry and the delinquent employee is given a fair opportunity to meet those adverse materials and evidence. In the instant case, the management to prove its case relied on certain materials gathered at the time of check and also examined its witnesses to prove them. As noted above, the petitioner, despite being given opportunity to examine his witnesses, did not choose to examine any one. The petitioner having not taken any steps to examine the passengers, who are said to have given statements against him at the time of check, cannot contend that the materials, namely the statements of the passengers, which were collected by the checking officials at the time of check, cannot be used against him, on the alleged ground that they were not proved in the departmental enquiry.

The contention of the petitioner that there is no misappropriation involved and no re-issuance of tickets, and at the most, the charge that can be leveled against the petitioner is one of wrong punching, in that instead of punching Stage Nos. 1 to 7, he had punched Stage Nos. 7 to 1, cannot be accepted. The Labour Court in the course of re-appreciation of the evidence found that the petitioner had given different versions as to the discrepancies in the punching of tickets and manipulation of the S.R. In that at the time of check, the petitioner gave an explanation on the spot that due to disturbed mind, he had wrong punched the tickets, while in his explanation to the charge memo, had admitted that he had issued tickets of Rs.5.25 ps., but failed to explain the alterations. The Labour Court further found that the check was exercised on the down journey. The tickets, which were seized from the passengers, indicate that they were already issued on the up journey from Miryalagadu to Haliya, but were re-issued by the petitioner to the passengers on the down journey from Haliya to Miryalaguda. Though the petitioner contended that the Controller at Haliya had put his endorsement admitting the fact of closure of S.R. by the petitioner, the fact remains the petitioner did not choose to examine the Controller, even though the Enquiry Officer had asked the petitioner whether he intends to examine the Controller. The Labour Court further found that the petitioner failed to note down the numbers of the tickets that were sold, which indicated that he had a *mala fide* intention to misappropriate the amounts collected from the passengers, by re-issuing the used tickets to them. These findings recorded by the Labour Court being based on proper appreciation of evidence, no interference is called for therewith.

It is the contention of the petitioner that the punishment of removal from service imposed by the disciplinary authority, as confirmed by the appellate authority

and the Industrial Tribunal, is disproportionate to the charge leveled, and as the Labour Court did not consider the question whether the punishment imposed is commensurate with the charge in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947, this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution consider the same and interfere with the award. There is no doubt that Section 11-A of the Industrial Disputes Act, 1947 confers wide discretion upon the Labour Court/Industrial Tribunal, to reappraise the material available on record and substitute its own findings for that of the disciplinary authority, and where it feels that the punishment awarded by the disciplinary authority is too harsh and not in proportion to the proved misconduct or is shocking to the conscience of the Court, can award lesser punishment. In the case on hand, the Labour Court on point Nos. 2 and 3 held that the petitioner by issuing the re-issued tickets to seven passengers had *mala fide* intention to make unlawful profit, causing loss to the Corporation, and considering the fact that re-issuing tickets and making alterations in the S.R., constitute grave irregularity, which stood proved in the enquiry, held that the punishment of removal from service imposed by the disciplinary authority on the petitioner, as confirmed in appeal, cannot be said to be disproportionate to the proved misconduct, and accordingly upheld the said punishment. Merely because the Labour Court did not interfere with the punishment, it does not mean that it failed to exercise the discretion vested in it under Section 11-A of the Industrial Disputes Act, 1947. Though there is no mention made by the Labour Court that it is passing the award under Section 11-A of the Industrial Disputes Act, 1947, the fact remains the Labour Court had compared the punishment imposed by the disciplinary authority vis-à-vis the proved misconduct, and considering the proved misconduct to be grave in nature, upheld the punishment, imposed by the disciplinary authority as confirmed in appeal, and no exception can be taken thereto. In **Pine Chemicals Ltd. v. Assessing Authority**, the apex Court held that non-mentioning of the provision under which the order came to be passed, would not make the order passed *ultra vires*, if the order so passed by the authority emanates out of the power conferred on it by the statute. Therefore, merely because the Labour Court has not mentioned the provision under which it had passed the award, it cannot be said that it had failed to exercise the jurisdiction vested in it.

The writ petition is devoid of merit, and the same is accordingly dismissed.

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N.V. RAMANA, J.

Date: 4th April, 2006.

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